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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN JOSE DIVISION**

FINJAN, INC., a Delaware Corporation,

Plaintiff,

vs.

SONICWALL INC., a Delaware  
Corporation

Defendant.

Case No. 5:17-cv-04467-BLF-VKD

**DEFENDANT SONICWALL INC.'S  
ADMINISTRATIVE MOTION TO  
FILE DOCUMENTS UNDER SEAL**

# I. INTRODUCTION

Pursuant to Civil L.R. 7-11 and 79-5, this Court’s Standing Civil Order Re: Civil Cases, the Parties Stipulated Protective Order (Dkt. 68), the Parties Stipulated Order Regarding Discovery of Electronically Stored Information (Dkt. 69), and Federal Rule of Civil Procedure 26(b)(5)(B), Defendant SonicWall Inc. (“SonicWall”) hereby moves the Court for leave to file under seal, pursuant to Civil L.R. 79-5(d)-(e), the items identified in the table below.

Exhibit No.	Document Title	Portion(s) to Seal	Reason(s) for Sealing
Ex. 1	Cisco Systems, Inc. Mutual Non-Disclosure Agreement dated January 19, 2004	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. See Declaration of Jennifer Forte in Support of Administrative Motion to File Documents Under Seal (“Forte Declaration”), ¶¶ 2-4.
Ex. 2	Finjan Software Inc. Amended and Restated Investors’ Rights Agreement dated June 2, 2004	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. See Forte Declaration, ¶¶ 2-4.

Ex. 3	Cisco – Finjan Holdings, Inc. Mutual Non-Disclosure Agreement dated March 21, 2014	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Forte Declaration, ¶¶ 2-4.
Ex. 4	Excerpts from the February 1, 2019 Deposition of Yoav Samet	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Forte Declaration, ¶¶ 2-4.
Ex. 5	Excerpts from the April 10, 2019 Deposition of Daniel Chinn	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Forte Declaration, ¶¶ 2-4.
Ex. 6	Exhibit 34 to the April 10, 2019 deposition of Daniel Chinn	Entire Document	The parties in <i>Finjan, Inc. v. Cisco Systems, Inc., No. 5:17-cv-00072-BLF-SVK</i> designated this document as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated Protective Order. <i>See</i> Forte Declaration, ¶¶ 2-4.

## II. ARGUMENT

### A. Legal Standard

There is a presumption of public access to judicial records and documents. *Nixon v. Warner*

1 *Commc'ns, Inc.*, 435 U.S. 589, 597 (1978). However, records attached to non-dispositive motions,  
 2 such as the case here, are not subject to the strong presumption of access. *Finjan, Inc. v. Proofpoint,*  
 3 *Inc.*, No. 13-CV-05808-HSG, 2015 WL 9023164, at \*1 (N.D. Cal. Dec. 16, 2015) (internal citation  
 4 omitted). Because the documents attached to non-dispositive motions “are often unrelated, or only  
 5 tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower  
 6 “good cause” standard of the Federal Rules of Civil Procedure Rule 26(c). *Id.* (internal quotation  
 7 marks omitted). The “good cause” standard requires a “particularized showing” that “specific  
 8 prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen.*  
 9 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002) (internal quotation marks omitted); *see* Fed.  
 10 R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific examples of articulated  
 11 reasoning” will not suffice. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

12 Sealing is appropriate where the requesting party “establishes that the document, or portions  
 13 thereof is privileged or protectable as a trade secret or otherwise entitled to protection under the  
 14 law.” N.D. Cal. Civ. L.R. 79–5(a). A party must “narrowly tailor” its request to sealable material  
 15 only. *Id.*

16 **B. SonicWall’s Administrative Motion to Seal Is Supported By Good Cause and Is**  
 17 **Narrowly Tailored**

18 SonicWall seeks to seal Exhibits 1-6 to the Declaration of Matthew Gaudet Pursuant to  
 19 Interim Order Re: April 17, 2020 Joint Discovery Letter Brief at Dkt. 255 (“Gaudet Declaration”) because the parties in *Finjan, Inc. v. Cisco Systems, Inc.*, No. 5:17-cv-00072-BLF-SVK designated  
 20 these documents as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Stipulated  
 21 Protective Order.  
 22

23 SonicWall contends that public disclosure of this information could cause harm to Finjan.  
 24 *Id.*; *see also Andrx Pharms., LLC v. GlaxoSmithKline*, 236 F.R.D. 583, 586 (S.D. Fla. 2006) (“Courts  
 25 dress technical information with a heavy cloak of judicial protection because of the threat of serious  
 26 economic injury to the disclosure of scientific information.”); *Network Appliance, Inc. v. Sun*  
 27 *Microsys. Inc.*, 2010 WL 841274, at \*5 (N.D. Cal. Mar. 10, 2010) (granting application to seal  
 28 “information regarding NetApp’s internal usability testing of its software”).

SonicWall's administrative motion is narrowly tailored and only seeks to seal the select exhibits that contain the information designated as Highly Confidential - Attorneys' Eyes Only. *See Kowalsky v. Hewlett-Packard Co.*, 2012 WL 892427, at \*2 (N.D. Cal. Mar. 14, 2012) (finding sealing appropriate where "[t]he proposed redactions contain[ed] . . . confidential product development information, the disclosure of which could harm [the defendant's] competitive advantage in the marketplace.").

### III. CONCLUSION

For these reasons, SonicWall respectfully requests that the Court grant its Administrative Motion to Seal.

Dated: May 4, 2020

Respectfully submitted,

/s/ Nicole E. Grigg

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